

Attorney Docket No. 05725.1222-00

In re U.S. Patent No. 7,455,831 B2

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VIA EFS WEB

Commissioner for Patents

Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT

In accordance with 37 C.F.R. § 1.705(b), patentee hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 983 days.

I. Statement of the Facts Involved

A. Correct Patent Term Adjustment

According to information printed on the face of the above-identified issued patent, U.S. Patent No. 7,455,831 (“the ‘831 patent”), this patent is entitled to 536 days of patent term adjustment.

Patentee has calculated a patent term adjustment of 983 days, i.e., 447 additional days, based on the following facts:

The application was filed on June 7, 2003.

The first Office Action on the merits was mailed August 25, 2006, creating a U.S. Patent and Trademark Office (USPTO) delay of 717 days.

A response to the August 25, 2006, Office Action was filed February 23, 2007, creating an Applicant delay of 90 days.

A second Office Action on the merits was mailed May 16, 2007.

A Request for Continued Examination (RCE) and a response to the May 16, 2007, Office Action was filed November 15, 2007, creating an Applicant delay of 91 days.

A third Office Action on the merits was mailed January 10, 2008.

A response to the January 10, 2008, Office Action was filed April 9, 2008.

The patent application was allowed on August 7, 2008, and the issue fee was paid on October 23, 2008. The '831 patent issued on November 25, 2008. The three-year pendency date for determination of patent term adjustment is July 7, 2006, thereby creating a USPTO delay of 496 days (i.e., the difference between the three-year pendency date of July 7, 2006, and the RCE filing date of November 15, 2007).

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee respectfully submits that it is entitled to a total patent term adjustment of 983 days which is the sum of 447 days of patent term adjustment due to exceeding three year pendency (49 of the 496 days of the USPTO delay overlapped with days due to other USPTO delay) and 717 days due to other USPTO delay in prosecution offset by 181 days of Applicant delay.

B. Terminal Disclaimer

The above-identified application is subject to a Terminal Disclaimer in which the term of this application will not be impacted since no patent issued from Application No. 10/612,920, currently abandoned.

C. Reasonable Efforts

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704, other than those identified above.

II. Fee

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by credit card authorization for \$200.00 to cover the required fee. Please charge any deficiencies to Deposit Account No. 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 30, 2008

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